

*Before the*  
POSTAL REGULATORY COMMISSION  
WASHINGTON DC 20268-0001

Tyner Post Office  
Tyner, Indiana

Docket No. A2012-127

PUBLIC REPRESENTATIVE'S ANSWER  
TO MOTION TO DISMISS

(October 10, 2012)

I. SUMMARY OF PUBLIC REPRESENTATIVE'S POSITION

The Commission has docketed a letter from Alan L. Burkholder of Tyner, Indiana as a section 404(d) appeal.<sup>1</sup> The Postal Service has filed a Motion to Dismiss.<sup>2</sup> The rationale for dismissal is lack of jurisdiction based on a premature filing, as the Postal Service has not yet made available a Final Determination to close the office. Motion to Dismiss at 2.

The Public Representative supports dismissal for the reason cited by the Postal Service. However, if a Commission order dismissing this case ensues, it would be in the public interest for the Commission to affirmatively note that dismissal is without

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<sup>1</sup> See PRC Order No. 1473, Notice and Order Accepting Appeal and Establishing Procedural Schedule, September 21, 2012 and Petition for Review Received from Alan Burkholder Regarding the Tyner, IN Post Office 46572, September 20, 2012 (Burkholder Petition). Order No.1473 at 3, Ordering Paragraph No. 4, designates the undersigned Commission employee as the Public Representative in this case.

<sup>2</sup> Motion of United States Postal Service to Dismiss Proceedings, October 1, 2012 (Motion to Dismiss).

prejudice to the filing of a subsequent appeal if and when the Postal Service makes the Final Determination available. This approach would help ensure that Petitioner Burkholder and other patrons of the Tyner Post Office understand their options.

There is clear precedent for the suggested approach. In Order No. 712, the Commission dismissed an appeal of the closing of the Ida Arkansas Post Office (Docket No. A2011-11). The Commission cited lack of jurisdiction, finding that the appeal was premature because a Final Determination had not been posted, and includes the “without prejudice” language. See Order No. 712 at 1.

## II. BACKGROUND

The retirement of the Tyner Post Office postmaster on June 17, 2011 launched a series of events that began with an emergency suspension and, soon thereafter, segued into a discontinuance study. Review of the pleadings indicates that the discontinuance study was apparently nearing its conclusion when the imposition of a nationwide moratorium on Post Office closings temporarily halted further action.

The pleadings further indicate that with the lifting of the moratorium, the Postal Service has resumed its discontinuance plans with respect to the Tyner Post Office, but has not yet posted a Final Determination. See *generally* Motion to Dismiss at 1.

## III. ANALYSIS

Since the Postmaster’s retirement, patrons of the Tyner Post Office have experienced changes in service (including, among other things, continuation of post office box service at the Tyner Post Office under an officer in charge and, more recently, installation of central boxes outside the Tyner Community Building in lieu of post office boxes). Burkholder Petition, Attachment 2. These changes have led Petitioner Burkholder to conclude that the Postal Service has closed the Tyner Post Office without following postal regulations. In support of this position, he cites the absence of a posted and dated Final Determination, the absence of a completed copy of the record

for review, as well as the posting of recent notices addressing delivery changes. *Id.* at 1.

The Postal Service, on the other hand, claims the status of the Tyner Post Office remains “suspended” and attributes the absence of a decision on closing (and thus the absence of a Final Determination) to the moratorium. Motion to Dismiss at 2-3.

In some instances, the reason why a post office remains in a suspended status is not clear. That does not appear to be the case here; instead, it seems the Tyner Post Office discontinuance study was interrupted by the moratorium. The Postal Service represents that it anticipates concluding its review of the Tyner Post Office soon, and states: “Should the Postal Service elect to continue with discontinuance, it will do so in the not too distant future with the posting of a final determination to that effect.” Motion to Dismiss at 3.

Section 404(d)(5) of title 39, U.S. Code provides that a determination of the Postal Service to close or consolidate any post office may be appealed by any person served by such office to the Postal Regulatory Commission within 30 days after such determination is made available to such person. Although some may view the issuance of a final determination as a formality, the language of section 404(d)(5) generally establishes issuance of a Final Determination as the event that triggers the right to an appeal.

Although the patrons of the Tyner Post Office have experienced changes in service, it does not appear that there has been a constructive closing which could trigger an appeal under section 404(d)(5). Therefore, as no Final Determination has been issued with respect to the Tyner Post Office, this appeal should be dismissed for lack of jurisdiction. However, it would be in the interests of the general public if any ensuing order includes language informing Petitioner Burkholder and other patrons of the Tyner Post Office about their right to appeal the Final Determination when and if it is posted.

Dismissal without prejudice would be consistent with Commission Order No. 712 in Docket No. A2011-11 (Ida, Arkansas).

#### IV. OTHER MATTERS

*Discrepancies in the record.* The Postal Service's filing in this case illustrates a point (apart from the immediate jurisdictional question) which warrants further attention given its potential for unnecessarily complicating future appeals: namely, material discrepancies in key documents that comprise the administrative record. Specifically, the "Proposal to Close the Suspended Tyner, IN Post Office and Establish Service by Rural Route Service" includes two sets of dates for the date of posting (September 8, 2011 and October 12, 2011) and two sets of dates for removal (November 9, 2011 and December 13, 2011). Motion to Dismiss, Attachment 3 at 1.

The appearance of dual dates on the Proposal to Close may stem from the Postal Service's continued reliance on an automated "fill in" program. Regardless of the reason, it would be in the public interest if the Commission would encourage Postal Service management to resolve material discrepancies before they emerge as issues in a full-fledged appeal.<sup>3</sup>

*Procedural schedule.* The procedural schedule in this case establishes October 11, 2012 as the deadline for Petitioner's Form 61 or an initial brief in support of the petition. Given the Public Representative's position on disposition of the Motion to Dismiss, the undersigned does not anticipate filing a brief in support of the Burkholder Petition.

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<sup>3</sup> It is not clear at this point if the Postal Service's resumption of discontinuance studies at Post Offices affected by the moratorium poses other concerns, such as reliance on an outdated record.

Respectfully submitted,

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